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TAYLOR et al. v. DELANEY.

Nov. 11, 1915. Rehearing Denied Nov. 26, 1915.

[86 S. E. 831.]

1. Trusts (§ 89*)—Resulting Trust—Degree of Proof Required.—Where land conveyed to a wife was purchased in 1899, and the husband, an uneducated colored man, unable to read and write, learned not later than 1905 that the conveyance had been made to the wife, but waited until after her death and his remarriage before bringing a suit to December rules, 1912, to establish a trust, on the ground that the consideration was paid by him and that he directed that the conveyance should be made to both jointly, and this lapse of time was not satisfactorily accounted for, clear and convincing testimony was required in support of complainant's cause of action.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 134-137; Dec. Dig. § 89.* 13 Va.-W. Va. Enc. Dig. 292.]

2. Trusts (§ 86*)—Resulting Trusts—Payment of Consideration.—Where a husband pays the consideration for a conveyance to his wife, no trust results; the presumption being that the payment of the consideration was for the benefit of the wife.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 128; Dec. Dig. § 86.* 13 Va.-W. Va. Enc. Dig. 279.]

Appeal from Circuit Court, Pulaski County.

Suit by Edward Delaney against A. Wayman Taylor and others. From a decree in favor of complainant defendants appeal. Reversed, and bill dismissed.

E. Lee Trinkle, of Wytheville, and *H. C. Gilmer*, of Pulaski, for appellants.

Robert E. Scott, of Richmond, and *John S. Draper, Jr.*, of Pulaski, for appellee.

STECKEL v. STECKEL.

Nov. 11, 1915.

[86 S. E. 833.]

Divorce (§ 62*)—Jurisdiction—"Domicile."—Where a husband deserted his wife and daughter in another state four years before the commencement of a suit for divorce, and the wife, with her daughter, came to Virginia where she resided for more than a year before the commencement of the action, with the expectation of remaining in the state indefinitely, she had acquired a domicile therein, enabling her to maintain the suit under Code 1904, § 2259, providing,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

if the defendant is not a resident of the state, the suit may be brought in the county or corporation in which the plaintiff resides; "domicile" being a residence in a particular place, accompanied by an intention to remain there for an unlimited time.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 200-202, 208-216, 220, 282; Dec. Dig. § 62.* 4 Va.-W. Va. Enc. Dig. 747.]

Appeal from Circuit Court, Rockingham County.

Suit by Carrie Steckel against William E. Steckel for divorce. From a decree of dismissal, plaintiff appeals. Reversed and rendered.

Charles A. Hammer, of Harrisonburg, for appellant.

OSBORN *v.* DARBY COAL MINING CO.

Nov. 11, 1915.

[86 S. E. 834.]

1. Master and Servant (§ 150*)—Liability for Injuries—Warning of Danger.—Notwithstanding a mineowner's right to abandon parts of its mine, which it had completed according to its plan of work, where there were no visible indications of the abandonment of a place, it was its duty to give notice and warning to employees, who, having no knowledge of the abandonment, would be likely to be led into such place in the performance of their duties.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 297, 299-302, 305-307; Dec. Dig. § 150.* 9 Va.-W. Va. Enc. Dig. 686.]

2. Master and Servant (§ 278*)—Actions for Injuries—Sufficiency of Evidence.—In an action for injuries to a mine employee, injured by a fall of slate in a part of the mine which defendant claimed had been completed according to its plans and abandoned, evidence as to whether plaintiff was directed to work at such place held to support a verdict in his favor.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Lee County.

Action by G. F. Osborn against the Darby Coal Mining Company. After a verdict for plaintiff, subject to a demurrer to the evidence, the demurrer was sustained, and judgment rendered for defendant, and plaintiff brings error. Reversed, and judgment entered on the verdict.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.